

APPEAL NO. 010189

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 31, 2000. The hearing officer states that the record was closed on December 8, 2000. With regard to the disputed issues, the hearing officer found that the appellant/cross-respondent (claimant) had not sustained a compensable injury on _____; that the date of injury for this claim is _____; that the claimant did not have disability; and that the claimant timely reported his alleged injury.

The claimant appealed the injury and disability issues. The respondent/cross-appellant (carrier), in a cross-appeal, appealed the timely notice issue and in a separate response urged affirmance of the determinations in its favor. There is no record of a response by the claimant to the carrier's appeal.

DECISION

Affirmed.

The claimant was employed as a job superintendent/crew foreman pursuant to an agreement with a construction company.¹ Many of the facts are in conflict. It is relatively undisputed that the claimant slipped and fell going down some slippery terrain in _____ injuring his neck and back. The claimant took himself off work for a week or so, then returned to light duty and eventually to regular duty in November 1999. The claimant did not file a workers' compensation claim for this injury. The claimant testified that the injury had improved but that he occasionally would continue to have neck and back pain. On Wednesday, _____, while supervising a crew pouring concrete, there was an overpour and the claimant, using a pick and shovel, began "chopping out" the overpoured concrete "while it was still semi-fresh." In doing so, the claimant began experiencing "shooting pain" down his right leg and numbness in his left arm. The claimant continued to work that day as well as February 10 and 11, and picked up the crew payroll checks on Saturday, February 12. The claimant testified that he was unable to get out of bed the following day and for the next six to eight weeks. The claimant testified that on Monday, February 14, he called the construction company owner, Mr. W and reported that he was not able to work. Exactly what was said is disputed, but the hearing officer could believe that the claimant reported a work-related injury at that time. The claimant did not seek medical attention at the time, explaining that he did not have money to see a doctor. The claimant was involved in a motor vehicle accident on May 25, 2000. The extent of that accident is disputed, although the claimant's truck sustained frame damage and the claimant said it was unsafe to drive.

¹Much of the CCH regarded who the employer and the carrier were and the record was left open for the carrier's attorney to brief a dual employment matter. These were not issues before the hearing officer; the hearing officer properly did not make findings on these matters and neither appeal asserts error on this point.

The claimant first sought medical treatment on July 14, 2000, in a hospital emergency room (ER). The ER report indicates complaints of low back and neck pain but that the claimant "denies trauma . . . no specific injury but reports he does lots of physical work" The claimant was subsequently seen by Dr. D on September 12, 2000, who, in a progress note of that date, recites a history of falling on slanted ground and diagnosed cervical spondylosis with radiculopathy and lumbar spondylosis.

Much of the cited, and other, evidence is in conflict and subject to differing interpretation. The hearing officer weighed the credibility and inconsistencies in the evidence and his determinations on the issues are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

In response to the claimant's inquiry as to why the carrier received the hearing officer's decision earlier than he did, the carrier is required to have an Austin representative who picks up and receipts for decisions on a daily basis, while decisions are mailed to the claimants. In either case, a party has only 15 days from the date of receipt of the hearing officer's decision to file an appeal. Section 410.202.

The hearing officer's decision and order are affirmed on all the issues.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge